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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

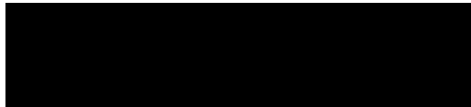


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File: EAC-00-198-52458 Office: Vermont Service Center

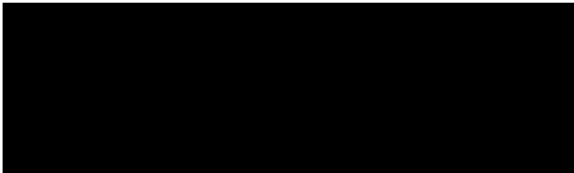
Date: JAN 22 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an advertising agency with over 6,600 employees and a gross annual income in excess of \$27 billion. It seeks to employ the beneficiary as a network coordinator for a period of three years. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director concluded that the proffered position appeared to be more reflective of a billing or accounts clerk, a position which does not require a baccalaureate degree in a specialized area. On appeal, counsel argues that the director erred in his decision. Counsel states that the petitioner normally requires a degree for the position and that a degree is common to the industry in parallel positions.

Counsel's argument on appeal is not persuasive. The Service does not rely solely on the title of a position in determining whether that position qualifies as a specialty occupation. The specific duties of the proffered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- * review and code all invoices received, sorting appropriately for client and department;
- * clear all successful invoice matching reports (IMRs) received in the Donovan Data System (DDS) mail every morning;
- * process all IMRs received from the buying group;

enter all syndication, network TV and Detroit radio billing;

- * check up on and call regarding missing invoices for prior months;
- * coordinate all documents returned from SDI;
- * serve as a liaison with department managers, collecting billing documents and invoices to be paid;
- * review billing processes to insure accuracy and integrity of data and information; and
- * answer billing and invoicing inquiries for marketing services.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The Service does not agree with counsel's argument that the proffered position of network coordinator is most similar to that of a marketing research analyst. In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to combine the duties of advertising, marketing, and public relations managers. A review of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition, at pages 25-26 finds no requirement of a baccalaureate degree in a specialized area for employment as

advertising, marketing, and public relations manager. A wide range of educational backgrounds are considered suitable for entry into such positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. In addition, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner states that a bachelor's degree in communications or its equivalent is the minimum requirement for the proffered position. The petitioner further states that it employs 24 people in similar or related positions, and all of those individuals possess either a bachelor's degree or the equivalent in a related field. However, the petitioner has not submitted any documentation to corroborate its assertions.

Counsel submits on appeal 12 job advertisements for positions with various titles such as media coordinator, marketing coordinator, traffic/project coordinator, communications coordinator, and research analyst. While most of the positions have duties which are similar to those of the proffered position, only one of the prospective employers specifies that a bachelor's degree in marketing, communications, or a related field is required. All the other positions require a baccalaureate degree or equivalent plus experience in the field. It is noted that two of the positions, research analyst and asset management supervisor, are positions with J. Walter Thompson. One position, research analyst, requires a bachelor's degree in geography, economics, marketing/advertising, math, or a related area. A bachelor's degree in accounting is preferred, but not required, for the other position as an asset management supervisor. However, the duties of both positions are different from those of the proffered position. Furthermore, it appears that a bachelor's degree in a specialized area is preferred, but not required, for those positions.

Counsel also submits a publication by the American Association of Advertising Agencies which describes various types of jobs in the field of advertising. According to the publication, a position as an assistant media buyer requires a bachelor's degree plus experience and another similar position, assistant research executive, requires at least a bachelor's degree, but no area of specialization is specified. Clearly, positions such as the proffered position require the services of an individual with a baccalaureate degree, but the evidence of record does not establish that the degree must be in a specialized area. Thus, the petitioner has not demonstrated that the requirement for a baccalaureate degree in a specialized area is common to the industry in parallel positions among similar organizations.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.